NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

ATUL K. AMIN, M.D., P.C.,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
POCONO MEDICAL CENTER,	:	
Appellee	:	No. 154 EDA 2013

Appeal from the Order entered December 13, 2012,
Court of Common Pleas, Monroe County,
Civil Division at No. 3432 Civil 2011

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED OCTOBER 04, 2013**

Atul K. Amin, M.D., P.C., ("the Practice") appeals from the December 13, 2012 order entered by the Court of Common Pleas, Monroe County, granting preliminary objections filed by Pocono Medical Center ("the Hospital") and dismissing the Practice's Amended Complaint. Upon review, we reverse and remand for further proceedings.

"In an appeal from an order granting preliminary objections in the nature of a demurrer we accept as true all well-pleaded material facts in the complaint, as well as all reasonable inferences deducible therefrom." ***Albert v. Erie Ins. Exch.***, 65 A.3d 923, 928 (Pa. Super. 2013) (citation and quotation omitted). We therefore recite, verbatim, the facts as alleged by the Practice in its Amended Complaint:

> 1. The Practice is a Pennsylvania professional corporation with a principal place of business located

at 3729 Easton-Nazareth Highway, Easton, Pennsylvania 18045.

2. [The Hospital] is a Pennsylvania non-profit corporation with a place of business located at 206 East Brown Street, East Stroudsburg, Pennsylvania 18301.

3. Atul K. Amin, M.D. ('Dr. Amin') is a licensed and board certified physician.

4. Dr. Amin is a member of the Medical Staff at [the Hospital] and has been an active member of the Staff since 1997.

5. Dr. Amin owns and operates the Practice.

6. At all relevant times, Dr. Amin maintained authority to enter into contractual agreements with [the Hospital] on behalf of the Practice.

7. Jamie A. Bastidas, M.D. ('Dr. Jamie Bastidas') is a licensed and board certified physician.

8. Dr. Jamie Bastidas is a member of the Medical Staff at [the Hospital] and has been an active member of the Staff since 2003.

9. Jose Alberto Bastidas, M.D. ('Dr. J. Alberto Bastidas') is a licensed and board certified physician.

10. Dr. J. Alberto Bastidas is a member of the Medical Staff at [the Hospital] and has been an active member of the Staff since 1997.

11. Drs. Amin, Bastidas, and Bastidas [collectively, 'the Doctors'] are employed by the Practice.

12. As members of the Active Medical Staff of [the Hospital], [the Doctors] are obligated to take on-call specialty coverage of [the Hospital]'s emergency room in accordance with the Medical Staff Bylaws.

13. The Medical Staff Bylaws require members of the Active Staff to provide specialty coverage in the emergency room to fulfill all responsibilities regarding emergency call.

14. The Medical Staff Bylaws do not state that an Active Staff member cannot receive payment for on-call emergency care services or that the Medical Staff is required to take on-call coverage without pay or compensation.

15. In October 2008, Dr. Amin learned that [the Hospital] engaged in a selective practice of either compensating certain private physicians for call coverage and/or utilizing employed physicians to satisfy that same responsibility.

16. As a result, Dr. Amin, on behalf of the Practice, requested reasonable compensation for the Practice when its members provide on-call coverage ('On-Call Services').

17. On or about November 11, 2008, Howard Z. Davis, M.D. ('Dr. Davis'), at the time[] [the Hospital]'s Senior Vice President for Medical Affairs and Chief Medical Officer, responded to Dr. Amin's inquiry and offered, on behalf of [the Hospital], to discuss the request with Dr. Amin.

18. As Senior Vice President for Medical Affairs and Chief Medical Officer and in light of the fact that Dr. Davis represented [the Hospital]'s interest in this matter, upon information and belief, Dr. Davis maintained actual and/or apparent authority to enter into an contractual agreement on behalf of [the Hospital][] with the Practice.

19. At all relevant times, Dr. Amin, on behalf of the Practice, believed that Dr. Davis had authority to agree to a payment arrangement on behalf of [the Hospital].

20. [The Hospital] did not advise Dr. Amin or the Practice that Dr. Davis did not have authority to bind [the Hospital] to a payment arrangement.

21. In or about December 2008 or early January 2009, Dr. Amin met with Dr. Davis to discuss a compensation arrangement for the Practice's provision of [On-Call Services].

22. During that meeting, Dr. Davis agreed that [the Hospital] would pay the Practice for On-Call Services rendered by [the Doctors].

23. Dr. Davis explained that a payment arrangement would begin during the next budget year beginning July 1, 2009.

24. Dr. Amin advised Dr. Davis that members of the Practice would continue to provide coverage subject to the agreement that [the Hospital] would provide retroactive payment beginning January 1, 2009 and Dr. Davis, on behalf of [the Hospital], agreed.

25. [The Doctors] agreed to continue their membership on the Medical Staff of [the Hospital] and continued to provide On-Call Services[] as a result of the agreement Dr. Amin, on behalf of the Practice, reached with Dr. Davis, on behalf of [the Hospital], regarding payment for On-Call Services.

26. If [the Hospital] had not agreed to pay the Practice for the On-Call Services, [the Doctors] may have either resigned from the Medical Staff or may have requested to change medical staff categories to a category that does not require on-call coverage.

27. Shortly thereafter, Dr. Amin confirmed the agreement reached with Dr. Davis via letters addressed to Dr. Davis and Kathleen Kuck, President and Chief Executive Officer of [the Hospital] ('Ms. Kuck').

28. At all relevant times, Ms. Kuck also maintained authority to enter into agreements on behalf of [the Hospital].

29. Neither Dr. Davis nor Ms. Kuck contacted Dr. Amin following receipt of the letters to dispute or clarify the summary of their agreement.

30. In confirmation of the verbal agreement, in late-March 2009, Dr. Amin received a draft Personal Services Agreement ('Draft Agreement') prepared on behalf of [the Hospital] for the Practice's review.

31. The Draft Agreement included a per diem rate of $500 for On-Call Services.

32. The Draft Agreement stated that the term of the agreement would commence on March 15, 2009, but failed to address retroactive payments back to January 1, 2009.

33. At that time, Ms. Kuck executed the Draft Agreement on behalf of [the Hospital].

34. After receiving the Draft Agreement, the Practice inquired about a higher per diem rate and noted that despite [the Hospital]'s prior agreement, the document did not address retroactive payment.

35. So as to effectuate the parties' agreement as to retroactive payment, the Practice's counsel provided [the Hospital] with language for the agreement to ensure compliance with the 'Stark Law,' a Federal law prohibiting certain self-dealing conduct.

36. In early May 2009, [the Hospital]'s counsel expressed concern about the retroactivity issue.

37. In response to the parties' involvement of counsel, Dr. Davis recommended that he and Dr. Amin meet to discuss the accurate memorialization of the agreement they reached earlier that year.

38. On May 19, 2009, Dr. Davis met with Dr. Amin and represented that [the Hospital] would include a provision for retroactive payment in the Draft Agreement.

39. Several months passed and [the Hospital] failed to provide a written agreement which reflected the agreement reached by Drs. Davis and Amin.

40. Throughout this period, in good faith reliance on the [agreement] reached by Drs. Amin and Davis, the Practice continued to provide On-Call Services.

41. Despite repeated inquiries over several months by the Practice regarding a written agreement, which reflected the parties' agreement, [the Hospital] failed to provide an accurately drafted agreement.

42. In January 2010, Dr. Amin confirmed the per diem rate of $500, but advised that he expected retroactive payment as agreed upon by the parties.

43. [The Hospital] took no further steps to amend the Draft Agreement.

44. In March 2010, [the Hospital]'s counsel advised that it needed to speak with Dr. Davis, who in the interim had left the area, in order to finalize the Draft Agreement.

45. At that time, [the Hospital] did not deny that the parties reached an agreement.

46. In fact, in June 2010, [the Hospital] inquired about the amount of fees the Practice had incurred for On-Call Services rendered since January 1, 2009, to which the Practice responded immediately.

47. [The Hospital], at no time, advised Dr. Amin or the Practice that it disputed the fees or that it would not pay for the On-Call Services rendered from January 1, 2009.

48. Thereafter, despite additional inquiries by the Practice, [the Hospital] failed to provide a written document which accurately reflected the parties' agreement regarding payment for On-Call Services.

49. Specifically, in July 2010, despite the events described herein, [the Hospital] advised: 'Dr. Davis has virtually all of [the Hospital]'s institutional knowledge in this matter. This matter does have [the Hospital]'s attention, and it is trying to get in touch with Dr. Davis to discuss his knowledge of this issue as well as his interactions with Dr. Amin.'

50. To date, [the Hospital] has not provided the Practice with a written Agreement reflecting the parties' agreement reached in or around December 2008 or January 2009.

51. Throughout this process, the Practice provided the On-Call Services based upon the terms reached by Drs. Amin and Davis.

52. Upon information and belief, [the Hospital] employs Charles K. Herman, M.D., a physician in the same specialty area as [the Doctors].

53. Upon information and belief, [the Hospital] pays Dr[]. Herman, either directly or indirectly through an employment compensation scheme, for on-call coverage services, which he performs on the few days a month the On-Call Services for [the Hospital] are not provided by [the Doctors].

54. The Practice has provided the On-Call Services on average between 21-24 days each month since January 1, 2009.

55. [The Hospital]'s outstanding fees owed to [the Practice] for the On-Call Services rendered since January 1, 2009 exceed $200,000.

Amended Complaint, 6/27/11, at ¶¶ 1-55.

On October 22, 2010, the Practice filed a Complaint in the Court of Common Pleas, Northampton County, seeking payment for On-Call Services rendered since January 1, 2009. It raised claims of breach of contract, unjust enrichment, detrimental reliance, promissory estoppel, equitable estoppel, and *quantum meruit*. The Hospital filed Preliminary Objections to the Complaint on November 18, 2010, raising improper venue, lack of specificity in the pleading, and legal insufficiency (demurrer). The parties filed a joint stipulation containing information related to venue "in an effort to maximize judicial economy." Joint Stipulation of Counsel, 1/31/11, at ¶ 14.[1] Following argument, the case was transferred to the Court of Common Pleas, Monroe County ("the trial court") on April 5, 2011. By order dated June 6, 2011, the trial court sustained the Hospital's remaining Preliminary Objections and granted the Practice permission to file an Amended Complaint.

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[1] In support of the stipulation regarding venue, the parties filed the affidavits of Ms. Kuck and Dr. Amin, as well as the Hospital's Answers to Requests for Admissions. ***See*** Joint Stipulation of Counsel, 1/31/11, at Exhibits A-C. In Ms. Kuck's affidavit concerning venue, there is additional information unrelated to venue, including, for example, that only she had the authority to agree to pay the Practice for On-Call Services and that there was no agreement between the Hospital and the Practice to pay the Practice for providing On-Call Services. Affidavit of Kathleen E. Kuck Concerning Venue at ¶¶ 28, 31. The stipulation between the parties, however, related solely to the issue of venue. ***See*** Joint Stipulation of Counsel, 1/31/11, at ¶¶ 6-7, 14-15. Therefore, contrary to the Hospital's assertion, the extraneous information unrelated to venue contained in Ms. Kuck's affidavit has not been "agreed to" by the Practice. ***See*** The Hospital's Brief at 7.

The Practice filed its Amended Complaint on June 27, 2011, again raising claims for breach of contract, unjust enrichment, detrimental reliance, promissory estoppel, equitable estoppel, and *quantum meruit*. The Hospital filed Preliminary Objections on July 14, 2011, demurring to each claim. On August 2, 2011, the Practice filed Preliminary Objections to the Hospital's Preliminary Objections, as well as an Answer to the Hospital's Preliminary Objections. The Hospital filed an Answer to the Practice's Preliminary Objections on August 22, 2011.[2] On October 14, 2011, the trial court sustained the Hospital's Preliminary Objections and dismissed the Practice's Amended Complaint.

The Practice filed a timely notice of appeal to this Court. On July 17, 2012, finding that the trial court failed to conduct a meaningful review the Practice's Amended Complaint prior to reaching its decision, we vacated its order and remanded the case for reconsideration of all of the Hospital's Preliminary Objections. Upon remand, the trial court entered an order and more comprehensive opinion on December 13, 2012, sustaining the Hospital's Preliminary Objections and dismissing the Practice's Amended Complaint.

The Practice filed a timely notice of appeal. On January 11, 2013, the trial court entered an order for the Practice to file a concise statement of errors complained of on appeal within 21 days ("1925(b) statement"). On

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[2] The Hospital never filed an Answer to the Hospital's Amended Complaint.

February 14, 2013, having not received the Practice's 1925(b) statement, the trial court filed a statement pursuant to Pa.R.A.P. 1925(a) finding all issues waived. On February 20, 2013, the Practice filed an emergency motion for leave to file its 1925(b) statement *nunc pro tunc*, asserting that it did not receive the trial court's order requiring the filing of a 1925(b) statement. The trial court granted the Practice's request for relief the same day. The Hospital filed a motion for reconsideration of the trial court's order permitting the Practice of file its 1925(b) statement *nunc pro tunc*, which the trial court denied on February 28, 2013.[3]

On appeal, the Practice raises the following issues for our review:

> A. Whether a reviewing court must accept as true the allegations of the Amended Complaint that the parties reached an agreement, and therefore find that the Practice properly pleaded a claim for breach of contract?
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> B. Whether a reviewing court abuses its discretion by ignoring the allegations of the Amended Complaint to find that 'negotiations' were ongoing despite clear allegations to the contrary?
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> C. Whether the Practice's breach of contract claim can be dismissed on a demurrer due to [the Hospital]'s assertion that the parties' agreement was illegal, despite illegality of contract being an affirmative defense which cannot be raised at the preliminary

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[3] In its appellee's brief, the Hospital contends that the Practice waived all issues for appeal by failing to timely file its 1925(b) statement. The Hospital's Brief at 13-21. As noted above, however, the trial court granted the Practice's request to file its 1925(b) statement *nunc pro tunc*, which the law expressly permits. ***See*** Pa.R.A.P. 1925(b)(2). We find no merit to the Hospital's argument of waiver.

objection stage, and the Practice asserting the legality of the contract?

D. Whether a reviewing court must accept as true the allegations of the Amended Complaint that the parties reached an agreement, and the Practice provided services pursuant thereto, and therefore find that the Practice properly pleaded its equity claims (counts II-VI)?

E. Whether the Practice's unjust enrichment and quantum meruit claims (counts II and VI) may be dismissed based upon an incorrect finding that [the Hospital] never requested benefits nor misled the Practice when it agreed to pay for work, obtained the benefits of that work, and then failed to pay?

F. Whether the Practice's detrimental reliance and promissory estoppel claims (counts III and IV) may be dismissed based upon an incorrect finding that the Practice did not reasonably rely on [the Hospital]'s agreement to pay for its services and that the Practice suffered no detriment when it was not in fact paid?

G. Whether the Practice's equitable estoppel claim (count V) may be dismissed based upon an incorrect finding that [the Hospital] never assumed a position or asserted a right inconsistent with its previous positions to the Practice's disadvantage, despite [the Hospital] inducing the Practice to provide services in exchange for an agreement to pay?

The Practice's Brief at 4-5 (footnote omitted).[4]

We review a trial court's decision related to preliminary objections according to the following standard:

> Our standard of review of an order of the trial court overruling or granting preliminary objections is to

[4] We reordered the issues for ease of disposition.

> determine whether the trial court committed an error of law. When considering the appropriateness of a ruling on preliminary objections, the appellate court must apply the same standard as the trial court.
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> Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

Albert, 65 A.3d at 927-28 (citation omitted).

In its first two issues, the Practice asserts that the trial court erred by employing an incorrect standard of review when granting the Hospital's preliminary objections to the Practice's breach of contract claim. The trial court found as follows:

> A careful reading of the Amended Complaint reveals the following facts. [The Practice] was performing on-call services to [the Hospital] as part of its duties as a member of the medical staff at [the Hospital]. Around December 2008 – January 2009, Dr. Amin, on behalf of [the Practice] and Dr. Davis, on behalf of [the Hospital], met to discuss a compensation arrangement for the on-call services provided by [the Practice]. During that meeting, Dr. Davis explained that a payment arrangement could begin during the next budget year beginning July 1, 2009. [the Practice] agreed to continue to provide on-call coverage but wanted an agreement for retroactive payments dating back to January 1, 2009.

> In late-March 2009, Dr. Amin received a draft agreement from [the Hospital] which offered per diem rate of $500.00 to commence on-March 15, 2009, but made no provision for retroactive payment dating back to January 2009. Dr. Amin, after receiving the draft agreement, made a counteroffer for a per diem rate of $1,000.00 and also continued to negotiate for the retroactive payments. In early May, [the Hospital], through [c]ounsel, expressed concern about the retroactive payment issue, and despite further discussion between the parties took no steps to amend the draft agreement regarding either of these issues.
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> By January 2010, Dr. Amin withdrew the counteroffer but continued to insist on the retroactive payments. In March, [the Hospital]'s counsel advised that they needed to speak with Dr. Davis in order to finalize a draft agreement; and in June, inquired about the amount of fees for services that had been rendered since January 1, 2009. In July 2010, [the Hospital] admits the matter had its attention, but at no time provided any verbal or written assent to the assent to the terms as [the Practice] avers them.
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> Accepting the foregoing as true and viewing it in favor of the sufficiency of the complaint, we cannot find that [the Practice] has pled sufficient facts to establish a claim for breach of contract. At best, after a very close reading of the Complaint, the parties were still negotiating.

Trial Court Opinion, 12/13/12, at 5-6 (footnote omitted).

A successful breach of contract action requires the plaintiff to establish that (1) a contract, including its essential terms, existed; (2) the defendant breached a duty imposed by the contract; and (3) damages resulted from the breach. ***Albert***, 65 A.3d at 928. We have identified the "essential

terms" of the contract to include, *inter alia*, the price or consideration involved. ***Lackner v. Glosser***, 892 A.2d 21, 31 (Pa. Super. 2006).

As noted above, when deciding preliminary objections in the nature of a demurrer, the trial court must "accept as true all well-pleaded material facts in the complaint, as well as all reasonable inferences deducible therefrom." ***Albert***, 65 A.3d at 928 (citation omitted). "The court ruling on the demurrer may not supply facts missing from the complaint, but may only consider those matters as arise out of the complaint." ***Id.*** (citation omitted).

We have reviewed the Amended Complaint with these standards in mind and find, pursuant to the well-pleaded facts alleged in the Amended Complaint, the Practice (through Dr. Amin) and the Hospital (through Dr. Davis) agreed to a per diem rate of $500 and that payments would be retroactive to January 1, 2009. Amended Complaint, 6/27/11, at ¶¶ 24, 38, 42. The Hospital failed to pay pursuant to the agreed upon terms of the contract despite the Practice's performance, resulting in damages in excess of $200,000 to the Practice. ***Id.*** at ¶¶ 54-55. Thus, the Practice sufficiently pled the existence of a contract between the Practice and the Hospital on the issue of payment for On-Call Services. ***See Albert***, 65 A.3d at 928.

Contrary to the trial court's conclusion, there is no mention in the Amended Complaint that the Practice made a counteroffer of $1,000.[5] The

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[5] The Practice's request for a $1,000 per diem is contained in the original Complaint. Complaint, 10/22/10, at ¶ 19. However, it is not identified as a

Amended Complaint only references an inquiry by the Practice into a higher per diem rate (without referencing the amount or indicating that it was a counteroffer), but specifically states that the Practice agreed to the rate of $500. ***Id.*** at ¶¶ 34, 42. Moreover, the trial court omits from its recitation of the facts contained in the Amended Complaint that on May 19, 2009, Dr. Davis met with Dr. Amin and, on behalf of the Hospital, agreed to retroactive payments. ***Id.*** at ¶ 38. Thus, the trial court is incorrect that "the pleadings fail to show that the parties ever reached an understanding," and that negotiations were ongoing. Trial Court Opinion, 12/13/12, at 6.

In the alternative, the trial court agreed with the Hospital that "any alleged oral agreement is not enforceable because it violates the Stark [Act], a Federal law prohibiting self-dealing conduct in the health care industry," and that such illegality was apparent on the face of the Amended Complaint. Trial Court Opinion, 12/13/12, at 6-7. In response, the Practice asserts, *inter alia*, that an alleged illegality is not apparent on the face of the Amended Complaint, and thus illegality could not be raised as a preliminary objection. The Practice's Brief at 28-29. The Practice therefore states that

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"counteroffer" in the original Complaint either. Moreover, the law is clear that "a pleading which has been […] superseded by amendment is out of the case in its capacity as a pleading, and the pleader is no longer concluded by it," at the preliminary objection stage. ***Hachick v. Kobelak***, 393 A.2d 692, 695 (Pa. Super. 1978) (citations omitted); ***see also Easton Sch. Dist. v. Cont'l Cas. Co.***, 304 Pa. 67, 72, 155 A. 93, 94 (1931) ("a superseded pleading is no longer before the court as a pleading"). Such statements will, however, constitute judicial admissions that are admissible at trial. ***Hachick***, 393 A.2d at 695.

the trial court erred by granting the preliminary objection raising illegality.

Id. at 29. We agree.

The Stark Act provides, in relevant part, as follows:

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

* * *

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

* * *

(h) Definitions and special rules

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(5) Referral; referring physician

(A) Physicians’ services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a ‘referral’ by a ‘referring physician’.

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a ‘referral’ by a ‘referring physician’.

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a ‘referral’ by a ‘referring physician’.

42 U.S.C.A. § 1395nn(a), (h)(5).

As the law recited above reflects, the Stark Act does not prohibit all oral contracts for compensation between a hospital and a physician as the trial court believes; it prohibits such contracts only if the physician makes referrals to the hospital under certain specified circumstances that do not meet any of the exceptions contained therein.[6] Although the trial court is correct that an exception to the Rule requiring illegality to be raised in a responsive pleading as a New Matter[7] in circumstances wherein the illegality is clear on the face of the Complaint, ***Nat'l Recovery Sys. v. Frebraro***, 430 A.2d 686, 687 (Pa. Super. 1981), this exception is inapplicable to the case at bar. Our review of the Amended Complaint reveals that there is no mention that the Practice makes "referrals" to the Hospital as defined by the Stark Act. To reach such a conclusion, the trial court would have had to look to the Hospital's bylaws, which the Hospital attached to its brief in support of its Preliminary Objections to the Practice's Amended Complaint.[8] However,

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[6] There are several listed exceptions to the prohibition contained in subsection (a) of the Stark Act, including, *inter alia*, circumstances wherein the referring physician or someone from his or her same practice group as the referring physician is providing the physicians' services (42 U.S.C.A. § 1395nn(b)(1)) and certain written personal service agreements that meet various standards set forth under the Stark Act (42 U.S.C. § 1395nn(b)(3)).

[7] ***See*** Pa.R.C.P. 1030(a).

[8] In its Amended Complaint, the Practice included the following averment: "From a regulatory review and compliance perspective, retroactive payment is not a gift or payment for a referral in violation of the Stark [Act]." Amended Complaint, 6/27/11, at ¶ 57. As this constitutes a legal conclusion, and not a statement of fact, neither the Hospital nor the trial

reliance on the bylaws constitutes an impermissible speaking demurrer[9] and the trial court could not consider the bylaws when ruling upon the Hospital's preliminary objections.[10] ***Regal Indus. Corp. v. Crum & Forster, Inc.***, 890 A.2d 395, 398 (Pa. Super. 2005).

Based upon the foregoing, we conclude that the trial court erred by granting the Hospital's Preliminary Objections for legal insufficiency of the breach of contract claim.

Pleading in the alternative as is permitted by Rule of Civil Procedure 1020(c), the Practice also raised several claims in equity in its Amended

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court was bound by this averment. ***Mikhail v. Pennsylvania Org. for Women in Early Recovery***, 63 A.3d 313, 316 (Pa. Super. 2013).

[9] "A 'speaking demurrer' is defined as one which, in order to sustain itself, requires the aid of a fact not appearing on the face of the pleading objected to, or, in other words, which alleges or assumes the existence of a fact not already pleaded, and which constitutes the ground of objection and is condemned both by the common law and the code system of pleading." ***Regal Indus. Corp. v. Crum & Forster, Inc.***, 890 A.2d 395, 398 (Pa. Super. 2005) (citation and quotation omitted).

[10] The Hospital contends that the bylaws are not an impermissible speaking demurrer because the Practice mentioned the bylaws in its Amended Complaint and the bylaws are related to the issues raised therein. The Hospital's Brief at 23 n.3 (citing ***Detweiler v. Sch. Dist. of Borough of Hatfield***, 376 Pa. 555, 558, 104 A.2d 110, 113 (1954); ***Barndt v. Pa. Dept. of Corr.***, 902 A.2d 589, 592, n.2 (Pa. Commw. 2006); ***Regal Indus. Corp.***, 890 A.2d at 398). As the cases relied upon by the Hospital make clear, to constitute an exception to the prohibition against speaking demurrers, the document appended to the Preliminary Objections must be one that the Complaint is "premised" or "predicated" upon, which is not the case with the bylaws at issue here. ***See Detweiler***, 376 Pa. at 558, 104 A.2d at 113; ***Barndt***, 902 A.2d at 592, n.2; ***Regal Indus. Corp.***, 890 A.2d at 398. Rather, the Amended Complaint is "premised" or "predicated" upon the oral agreement allegedly reached between Drs. Amin and Davis.

Complaint, all of which the trial court found to be legally insufficient. The Practice asserts that these findings were in error.

Beginning with its claims for unjust enrichment and *quantum meruit*,[11] the Practice was required to plead that (1) it conferred benefits on the Hospital; (2) the Hospital appreciated such benefits; and (3) the Hospital accepted and retained the benefits under circumstances that would render it inequitable for the Hospital to retain the benefit without payment to the Practice.[12] ***Shafer Elec. & Const. v. Mantia***, 67 A.3d 8, 12 n.5 (Pa. Super. 2013).

> A quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another. In determining if the doctrine applies, we focus not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. […] The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit.*

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[11] "Unjust enrichment is a synonym for *quantum meruit*." ***Ne. Fence & Iron Works, Inc. v. Murphy Quigley Co., Inc.***, 933 A.2d 664, 667 (Pa. Super. 2007).

[12] We find no merit the Hospital's claim that the Practice waived this issue for review. ***See*** The Hospital's Brief at 52.

Ne. Fence & Iron Works, Inc. v. Murphy Quigley Co., Inc., 933 A.2d 664, 668-69 (Pa. Super. 2007) (citation omitted).

The trial court found as follows:

> In an unjust enrichment claim, a plaintiff must allege in its complaint facts showing the defendant specifically requested benefits or misled the plaintiff. Ira G. Steffy & Son, Inc. v. Citizens Bank of Pennsylvania, 7 A.3d 278 (Pa. Super. 2010). Here, [the Practice] does not allege that [the Hospital] requested certain benefits or that [the Hospital] misled [the Practice]. [The Practice] admits in its Amended Complaint that it was obligated to cover [the Hospital's] emergency room for their particular medical specialty per the Medical Staff Bylaws. [The Practice] alleges that after performing these duties, it came to learn that other private physicians were getting paid to simply be on-call for [the Hospital] at Pocono Medical Center. By [the Practice]'s own admission in its Amended Complaint it was obligated to provide on-call services as part of its duties to be part of [the Hospital]'s medical staff. There was no allegation that [the Hospital] required that [the Practice] continue to be on the medical staff, or that [the Hospital] requested [the Practice] to continue on-call services in the absence of an agreement between the parties in which [the Hospital] would pay [the Practice] simply to be on-call. [The Practice] could have withdrawn its medical staff membership and stopped on-call services at any time.
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> [The Practice] also failed to plead facts sufficient to show it was misled. In fact, nowhere in [the Practice]'s Amended Complaint does [the Practice] state it was misled. [The Practice] asserts that Dr. Davis agreed to pay for on-call services and despite a demand by [the Practice] to be paid for same, [the Hospital] failed to do so. As cited above, [the Practice]'s Amended Complaint asserts that negotiations as to the rate of compensation for on-call coverage took place, that no agreement was

> reached, and that negotiations ceased. [The Practice] alleges that [the Hospital] offered an amount for services that was unacceptable to [the Practice]. There were no allegations made that [the Practice] was misled as to the amount of compensation they were to receive or when the compensation would begin. Therefore, [the Practice] cannot recover for unjust enrichment or for quantum meruit as alleged.

Trial Court Opinion, 12/13/12, at 9-10.

We begin with the trial court's assertion that the Practice must allege that it was misled in order to proceed on claims of unjust enrichment and *quantum meruit*. Our research reveals that the case relied upon by the trial court, and all other cases standing for this proposition, address circumstances wherein a **third party** benefits from a contract between two other parties – the law requires that the third party have specifically requested the benefit or misled the plaintiff. ***See, e.g., D.A. Hill Co. v. Clevetrust Realty Investors***, 524 Pa. 425, 434, 573 A.2d 1005, 1010 (1990); ***Meehan v. Cheltenham Twp.***, 410 Pa. 446, 451, 189 A.2d 593, 596 (1963); ***Ira G. Steffy & Son, Inc.***, 7 A.3d at 283; ***Styer v. Hugo***, 268, 619 A.2d 347, 350 (Pa. Super. 1993), *aff'd*, 535 Pa. 610, 637 A.2d 276 (1994). Indeed, in the case relied upon by the trial court for this proposition, ***Ira G. Steffy & Son, Inc.*** (a case involving a contractor's failure to pay a subcontractor for work done on the contract between the contractor and the owner of the property), this Court stated that enrichment may be deemed unjust "if the owner had **requested the benefit,**

contracted directly with, or misled the subcontractor." ***Ira G. Steffy & Son, Inc.***, 7 A.3d at 283 (emphasis added) (citing ***D.A. Hill Co.***, 524 Pa. at 432-34, 573 A.2d at 1009-10). As there is no third party beneficiary to this alleged quasi-contract, there is no requirement that the Hospital have misled the Practice in order for the Practice to recover on the theories of unjust enrichment and *quantum meruit*.

Reviewing the Amended Complaint as our standard of review requires, we observe that the Practice pled that Dr. Davis, on behalf of the Hospital, promised the Practice that the Hospital would pay the Doctors for providing On-Call Services beginning on January 1, 2009. Amended Complaint, 6/27/11, at ¶¶ 22, 24, 38, 42. In reliance on that promise, the Doctors continued their status as members of the medical staff of the Hospital and provided the On-Call Services. ***Id.*** at ¶¶ 40, 54. The Hospital received the benefit of the Doctors remaining as members of its medical staff and their provision of On-Call Services, but failed to pay for the services as promised. ***Id.*** at ¶¶ 54-55, 67, 83-84.

We find no merit to the trial court's conclusion that the Practice had to plead that the Hospital forced the Doctors to remain members of the medical staff in order to recover on these theories. The Practice pled that in the absence of the Hospital's promise, the Doctors may have discontinued their status as medical staff members, but in reliance on Dr. Davis' assurance, maintained their membership. ***Id.*** at ¶ 26. Furthermore, the trial court's

finding that no agreement was reached does not preclude the Practice's recovery for unjust enrichment and *quantum meruit*. To the contrary, as stated above, it is the absence of an agreement that brings this claim under the ambit of the doctrines of unjust enrichment and *quantum meruit*. ***Ne. Fence & Iron Works, Inc.***, 933 at 668-69.

Accepting the Practice's well-pled averments as true, the circumstances are such that the Hospital was unjustly enriched by the Practice's performance. ***See Shafer Elec & Const.*** 67 A.3d at 12 n.5; ***Albert***, 65 A.3d at 928. Therefore, the trial court erred by granting the Hospital's Preliminary Objections on this basis.

Turning to the Practice's claims of promissory estoppel and detrimental reliance,[13] the Practice was required to plead that (1) the Hospital made a promise that it should have reasonably expected to induce action or forbearance by the Practice; (2) the Practice took action or refrained from acting in reliance on the Hospital's promise; and (3) the only way to avoid injustice is by enforcing the promise. ***Guerra v. Redevelopment Auth. of City of Philadelphia***, 27 A.3d 1284, 1292 (Pa. Super. 2011). "As promissory estoppel is invoked in order to avoid injustice, it permits an equitable remedy to a contract dispute. Thus, as promissory estoppel makes

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[13] Once again, these two claims are synonymous. ***See Rinehimer v. Luzerne Cnty. Cmty. Coll.***, 539 A.2d 1298, 1306 (Pa. Super. 1988); ***see also Peluso v. Kistner***, 970 A.2d 530, 532 (Pa. Commw. 2009) (stating that "detrimental reliance […] is another name for promissory estoppel") (citation and quotation omitted).

otherwise unenforceable agreements binding, the doctrine sounds in contract law." ***Id.*** (citation omitted).

The trial court found that because "there was no agreement alleged as to price, there is no reasonable reliance by [the Practice]." Trial Court Opinion, 12/13/12, at 11. As we have already addressed above, this finding is erroneous, as the Practice plainly pled that there was an agreement between the Practice and the Hospital (through Dr. Davis) as to price. Amended Petition, 6/27/11, at ¶¶ 38, 42.

The trial court further found that the Practice did not allege that it suffered any detriment, as it admitted that the Doctors were required to provide On-Call Services as a condition of being members of the Hospital's medical staff. Trial Court Opinion, 12/13/12, at 11. This finding is also in error, as the Practice averred in its Amended Complaint that in reliance on the promise for payment made by Dr. Davis, the Doctors continued their status as members of the medical staff of the Hospital and provided the On-Call Services. Amended Complaint, 6/27/11, at ¶¶ 40, 54. The Practice further averred that in the absence of the Hospital's promise, the Doctors may have discontinued their status as medical staff members, but in reliance on Dr. Davis' assurances, maintained their membership. ***Id.*** at ¶ 26.

Viewing the Amended Complaint as our standard of review requires, we conclude that the Practice adequately pled its claims of promissory

estoppel and detrimental reliance. The trial court therefore erred by sustaining the Hospital's Preliminary Objections as to these claims.

Lastly, addressing the Practice's claim of equitable estoppel, we have previously explained the doctrine as follows:

> Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. A doctrine sounding in equity, equitable estoppel recognizes that an informal promise implied by one's words, deeds or representations which leads another to rely justifiably thereon to his own injury or detriment may be enforced in equity.

Prime Medica Associates v. Valley Forge Ins. Co., 970 A.2d 1149, 1157 (Pa. Super. 2009) (citation omitted).

The trial court found that the Practice "failed to set forth facts that support the necessary requirements of equitable estoppel." Trial Court Opinion, 12/13/12, at 11. It bases this conclusion on its faulty finding that the Amended Complaint does not reflect "a meeting of the minds as to price or retroactivity during negotiations," and that the Practice only avers that the Hospital "refused to compensate at the amount requested by [the Practice] or to offer retroactivity of fees." ***Id.*** at 11-12. As we have repeatedly stated throughout this decision, this finding is incorrect, as the Practice averred that the Practice, through Dr. Amin, and the Hospital, through Dr. Davis, agreed that the Hospital would compensate the Doctors for providing On-Call Services at a per diem rate of $500 and that payments

would be retroactive to January 1, 2009. Amended Complaint, 6/27/11, at ¶¶ 24, 38, 42. The Practice further averred that the Hospital's promise to pay the Doctors for providing On-Call Services induced them to remain members of the Hospital's medical staff, and that they continued to provide On-Call Services in reliance on that promise. ***Id.*** at ¶¶ 26, 40, 54. The trial court therefore erred by granting the Hospital's Preliminary Objection as to this claim.[14]

Having found that the trial court erred by granting each of the Hospital's Preliminary Objections, we reverse the order of the trial court dismissing the Amended Complaint and remand the case for further proceedings. We emphasize that we express no opinion on the strength (or weakness) of the Amended Complaint. We are required under our standard of review to give the Practice all reasonable inferences to be adduced from the pleading. While the Hospital vehemently argues that the Amended Complaint is baseless, the proper mechanism to raise its defenses based on

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[14] The Hospital asserts that the Practice failed to aver fraud on the part of the Hospital, and thus its claim for equitable estoppel must be dismissed. Hospital's Brief at 62, 63 (citing ***Funds for Bus. Growth, Inc. v. Woodland Marble and Tile Co.***, 443 Pa. 281, 288, 278 A.2d 922, 926 (1971)). We disagree, as the Amended Complaint includes averments that despite the fact that the Hospital and the Practice reached an agreement regarding compensation for the provision of On-Call Services by the Doctors, the Hospital neither provided the agreement in writing nor performed on the promise to pay. Amended Complaint, 6/27/11, at ¶¶ 50, 55-56. This alleged conduct is not "as consistent with honest purpose and with absence of negligence as with their opposites." ***In re Tallarico's Estate***, 425 Pa. 280, 288, 228 A.2d 736, 741 (1967).

the Hospital bylaws and the Stark Act is an Answer and New Matter. If it is entitled to relief as a matter of law, that relief can only be afforded after the facts and issues are framed through a motion for a judgment on the pleadings or summary judgment.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

Prothonotary

Date: 10/4/2013